exercise its power of revision under the Code: *Lee Yu Fah* v. *Public Prosecutor*;[2] See also the footnote to this section in *Mallal's* Criminal Procedure, 4th Edition, page 452. Ong Hock Sim J., (as he then was) did that in *Public Prosecutor* v. *Hussian & Anor.*[3] There the accused pleaded guilty to the charge of contravening one of the conditions of their boat licence by trawling outside the demarcation area. The charge was held to be bad and disclosed no offence as no regulations had been made by the Yang di-Pertuan Agong to demarcate any area for any particular type of fishing. Despite the plea of guilty the judge, in the exercise of his powers of revision, quashed the conviction.

In the present case although the appellant has no right of appeal against his conviction the appellate court is entitled to look into the record and, if there is any irregularity which occasions a failure of justice, the court will exercise its powers of revision. There are several unsatisfactory features in this case. The alleged offence was committed in 1966. No report was made until 1969. No charge was preferred against appellant until April, 1970. The prosecution was not sure at all what offence or offences the appellant had committed. There is evidence to indicate that the money could be merely a loan but because appellant was unable to repay it fully that the matter was referred to the police.

The appellant was alleged to have cheated the people of two kampongs of $1,650 by dishonestly inducing them to deliver the said sum to him. It is not every form of dishonesty inducing a person to deliver property that amounts to cheating but only those forms of dishonesty in which the dishonesty consists in deceiving of the person concerned. The charge did not even disclose the names of the persons cheated. It is so general that it could mean that the appellant cheated the whole population of the two kampongs which is of course not true. Further the charge did not disclose particulars of deception.

The record only shows that a few complained against appellant because they did not succeed in getting repayment of the loan. It is possible that the appellant might have cheated some of those who contributed money. But whether he is guilty or not must depend on the facts of each particular case. There must be separate charges. The charge in this case was badly drafted. In a cheating charge it is necessary to particularise the deception. I pointed this out in the case of *Hwong Tiong Cheong* v. *Public Prosecutor*[4] when I allowed an appeal in a cheating charge under section 417 of the Sabah Penal Code. I stated that the forms of charges set out in various editions of *Ratanlal's* Law of Crimes merely serve as a general guide and bear no relation to any particular set of facts. The charge must be so framed to enable an accused person to know with certainty what case he has to meet. I also referred to *Liew Min Poh* v. *Public Prosecutor*[5] where Azmi J., (as he then was) held that in a charge under section 420 of the Penal Code it was necessary to set out not only the fact that the appellant had obtained goods by dishonest means but also the deception which had been practised otherwise the charge was illegal amounting to a nullity.

Magistrates must exercise extreme care when dealing with a cheating charge. Taylor J. put it lucidly in *Lew Cheok Hin* v. *Public Prosecutor*[6] in these words: —

"The fundamental principle is that the offence must be stated with sufficient precision to enable the accused to meet the charge. As regards cheating it is specifically enacted by section 153 (see illustration (b) of section 140 of the Sabah Criminal Procedure Code) the manner in which the victim was cheated must be set out. It is the duty of the court to scrutinise the charge at the commencement of every summary trial. An amendment may be made at any stage and, in general, the earlier the better but it is at the close of the evidence for the prosecution that the court is in the best position to decide exactly what is the case which the accused is required to meet. It is therefore the express statutory duty of the lower courts to consider every charge at that stage and if necessary to amend it then."

Lim Chin Huat v. *R.*[7] is an instructive case as to how particulars may be set out in respect of a charge for the offence of cheating. It was cited with approval in *Khoo Kay Jin* v. *Public Prosecutor.*[8]

In the circumstances I do not think the conviction should be allowed to stand. Failure to particularise deception in a cheating charge is an irregularity which affects the legality of the conviction resulting in the failure of justice. Therefore in the exercise of my powers of revision under section 282 of the Sabah Criminal Procedure Code I would quash the conviction. It also follows that the sentence must be set aside.

Conviction quashed.
Sentence set aside.

LIM YOW CHOON v. PUBLIC PROSECUTOR

[F.C. (Azmi L.P., Suffian and Ong Hock Sim F. JJ.) November 6, 1971]

[Kuala Lumpur — Federal Court Criminal Reference No. 3 of 1971]

Criminal Law and Procedure — Cautioned statements — Put in as exhibit by prosecution — Whether part of prosecution case — Contradictions between caution statement and other evidence of prosecution — Whether there is case to answer.

In this case after the appeal of the appellant against his conviction and sentence on a charge under the Prevention of Corruption Ordinance, 1961 had been dismissed, on his application the High Court reserved the following questions of law for the decision of the Federal Court:

1. Whether the court should treat the cautioned statement of the accused (appellant/applicant) which was put in by way of an exhibit by the prosecution before the close of the prosecution's case, as forming part of the prosecution's case as opposed to part of the defence case, when the court was considering whether the accused should be called upon to enter into defence.
2. If the cautioned statement should be treated as forming part of the prosecution's case, in view of the contradictions between the contents of the cautioned statement and other evidence of the prosecution, whether at the close of the prosecution case the court should find that there was no case for the accused to answer.

Held: (1) the cautioned statement in the circumstances of the case must be regarded as forming part of the case for the prosecution:

(2) notwithstanding that the cautioned statement was part of the evidence for the prosecution and that there were facts in the cautioned statement which appeared to contradict other parts of the evidence led by the prosecution, it was open to the trial judge as a judge of facts to assess the evidence and in so doing accept part of it and reject the rest.

FEDERAL COURT.

T. Selvarasan for the applicant.

Hassan bin Ishak (Deputy Public Prosecutor) for the respondent.

Azmi L.P. (read by **Suffian F.J.**): The appellant was convicted by the sessions court on the following charge:

"That you on the 7th day of March, in the year 1968, at about 2.30 p.m. at the back lane of Pesiaran Raja Laut, in the District of Kuala Lumpur, in the State of Selangor, being an agent of the Government of the Federation of Malaysia *to wit* a police constable No. 30015 of the Royal Federation of Malaysia Police Force, did corruptly accept Fifty dollars ($50) cash from one Chang Choon Kwong as a reward for showing favour to the said Chang Choon Kwong in relation to your Principal's Affairs, *to wit* to have assisted in the release of the said Chang Choon Kwong who was arrested and detained for being suspected of having committed an offence of theft on 18.2.1968 and that you have thereby committed an offence punishable under section 4(a) of the Prevention of Corruption Act 42 of 1961."

and was sentenced to a fine of $2,500 and in default to two years' imprisonment. He appealed to the High Court and his appeal was dismissed. On his application the High Court reserved the following questions of law under section 66 of the Courts of Judicature Act, 1964 for the decision of the Federal Court:

1. Whether the court should treat the cautioned statement of the accused (appellant/applicant) which was put in by way of an exhibit by the prosecution before the close of the prosecution's case, as forming part of the prosecution's case as opposed to part of the defence case, when the court was considering whether the accused should be called upon to enter into defence.
2. If the cautioned statement should be treated as forming part of the prosecution's case, in view of the contradictions between the contents of the cautioned statement and other evidence of the prosecution, whether at the close of the prosecution case the court should find that there was no case for the accused to answer.

It would appear that one Chang Choon Kwong hereinafter referred to as PW4 was arrested on suspicion of picking pockets by policeman P.C. Tambi PW1 on 18th February 1968. On his arrest PW4 was interrogated by Sgt. Ranjit Singh through the interpretation of the appellant, and after a week's detention he was released on the instructions of assistant superintendent of police Pritam Singh.

According to PW4, on 24th February 1968, before he was actually released from custody the same day, the appellant came to see him and asked from him $100 so that he, the appellant, could obtain his release. PW4 protested that he was penniless, but promised to pay the appellant whenever he had enough money. They met again on several occasions but each time PW4 asked for time. On one of these occasions the appellant apparently agreed to accept $50 only.

After their last meeting on 3rd March 1968, PW4 decided to report to the anti corruption agency. He saw several officers and on 7th March, assistant superintendent of police Ang Chooi Tuan handed to him five $10 notes which he was to give to the appellant should he make further demand. On 7th March they met and PW4 handed the five $10 notes to the appellant. The appellant was subsequently arrested and the notes were found in his trouser pocket.

After his arrest the appellant made a cautioned statement to assistant superintendent of police Abdul Ghani. He admitted that the $50 were found in his trouser pocket but denied that they were corruptly paid. In answer to questions put to him by the recording officer as to how the notes came into his trouser pocket he merely said he did not know. He also denied that he knew PW4, but remembered that on 19th February 1968 PW4 was arrested. He denied meeting him again until the date he himself was arrested. He also denied borrowing any money from PW4 or that PW4 ever borrowed money from him.

Evidence was given as to the planning of the trap and the arrest of the appellant. The cautioned statement by the appellant was also put in as part of the evidence for the prosecution. When called upon to make his defence, the appellant gave evidence in the witness box. In his evidence he explained how he got the money from PW4. He now admitted that he knew PW4 since 1967 and they became friendly. On one occasion he wanted information on pickpocketing from PW4 and in anticipation of getting any such information, he gave PW4 $70. He now said that having failed to give any information PW4 paid back to him the $50. Immediately after receiving the money he was arrested. He denied that the $50 was for assisting the release of PW4. He was cross-examined as to the discrepancies between what he said in his cautioned statement and in his evidence in court. The learned president convicted the appellant.

In his judgment, in reference to the cautioned statement made by the accused, the learned president pointed out that the appellant pleaded ignorance as to how the marked notes came to be found on him and suggested that they were probably pushed into his pocket by some pickpocket. On the other hand, in his evidence given from the witness box the appellant explained that the notes found on him were given to him by PW4, in repayment of money the appellant previously advanced to PW4. Finally the learned president expressed the view that the appellant had failed to give a satisfactory explanation for the two different versions of his story and thereupon ruled that the accused's credit was thereby impeached.

To go back to the questions which were referred to us.

In our opinion, the answer to the first question is that the cautioned statement in the circumstances of the case must be regarded as forming part of the case for the prosecution.

In reference to the second question, we are of the view that notwithstanding that the cautioned statement was part of the evidence for the prosecution, and that there are facts in the cautioned statement which appear to contradict other parts of the evidence led by the prosecution, it was still open to the trial court as a

judge of facts to assess the evidence and in so doing accept part of it and reject the rest. It would not necessarily follow as a matter of law, that in the circumstances of the case, the trial court should acquit the appellant at the close of the case for the prosecution by reason of such contradictory evidence in the case for the prosecution.

Reference answered.

Solicitors: *T. Selvarasan & Co.*

PUBLIC PROSECUTOR v. TANGGAAH

[R.Cr.J. (Sharma J.) January 15, 1972]

[Ipoh — Perak Criminal Revision No. 3 of 1972]

Criminal Law and Procedure — Revision — Power of court — Criminal Procedure Code (F.M.S. Cap. 6) s. 323.

Criminal Law and Procedure — Trial — Adjournment — Refusal of — Discretion of magistrate — Criminal Procedure Code (F.M.S. Cap. 6) s. 259.

This case concerned the refusal of a magistrate to grant any further adjournment of a case which had been adjourned seven times.

A notice of revision was issued to the parties concerned by the High Court under the power contained in section 323 of the Criminal Procedure Code.

Held: the grant of an adjournment in a criminal case is a matter of discretion for the magistrate and is governed by the provisions of section 259 of the Criminal Procedure Code. In the circumstances of this case the magistrate was perfectly right in refusing an adjournment and there were no grounds to interfere with his decision.

Per Sharma J.: "... The policy of the law is that criminal cases should be disposed of with the least possible delay. Public interest demands that criminal justice should be swift and sure and that the guilty should be punished while the events are still fresh in the minds of the witnesses and the public and that the innocent should be absolved of the crime as early as is consistent with a fair and impartial trial..... The longer the period is allowed to elapse from the time of arrest to the time the witnesses give evidence, the greater are the chances of confusion and of truth veiled in obscurity.... The question of adjournment of a trial is a matter for the discretion of the court. That discretion, however is not an arbitrary one but has to be exercised judicially and only in cases which come within the terms of this section. The discretion as to adjournment is entirely that of the trial magistrate and is unfettered by any outside authority however high such authority be, irrespective of whether it is the Public Prosecutor or a distinguished counsel. The rank or status of the accused is an irrelevant consideration. Until the matter comes up in revision even the appellate court acts in excess of its jurisdiction if it tells the trial magistrate to postpone a particular case. The discretion is that of the magistrate and of the magistrate alone." (*Post* p. 208 I *I*).

REVISION.

A. Mahendran for the applicant.

Haidar bin Mohamed Noor (Deputy Public Prosecutor) for the Public Prosecutor.

Sharma J. (delivering oral judgment): Mr. Mahendran saw me in chambers on 10th January, 1972 and complained to me of the difficult position he found himself in as a result of the Bruas magistrate's decision in refusing to grant him an adjournment in arrest case No. 88 of 1970 which the magistrate had fixed for hearing on the 14th January on which date Mr. Mahendran had also to appear in the High Court Kuala Lumpur on the hearing of a criminal appeal. I was told that the date of hearing of the criminal appeal at Kuala Lumpur was notified to Mr. Mahendran in a letter dated the 2nd December, 1971 and that the Bruas magistrate had notified him of the date only on the 17th December, 1971 *i.e.* the criminal appeal at Kuala Lumpur had been fixed much earlier. Mr. Mahendran had written a letter to the Bruas magistrate on the 22nd January, 1971 explaining his difficulty but the magistrate turned down the request for any further adjournment of the Bruas case.

I thought that there might be a likelihood of some injustice resulting to the accused in the Bruas case and therefore after having heard Mr. Mahendran's complaint, I directed the registrar to send for the file in the Bruas case so that I may have an opportunity to go through it and if necessary act in revision under the power contained in section 323 of the Criminal Procedure Code. A notice of revision was consequently issued to the parties concerned and it is that revision which comes up for hearing today.

The brief history of Bruas magistrate's court arrest case No. 88 of 1970 is that the accused was charged under section 379 of the Penal Code. He first appeared in court on the 13th November, 1970 and on that date he pleaded guilty to the charge. The case was, however, adjourned to the 7th December, 1970 for facts and sentence. On the 7th December, however, he withdrew his plea of guilt and the case had to be adjourned to 8th January, 1971. Two days before the date of hearing, *i.e.* on the 6th January, 1971, the accused retained Messrs. Mahendran & Co. and on that very day a letter was sent to the magistrate, Bruas, informing him that 8th January, 1971 was not convenient to Mr. Mahendran who was in charge of the case. Certain dates were suggested in that letter and as a result thereof the case was adjourned to the 18th January, 1971. On that day the accused was absent because of some illness. The matter was then adjourned to the 5th March, 1971 but on that day the counsel for the accused was ill. The case consequently had to be adjourned to the 30th April, 1971 when Mr. Mahendran appeared in court but asked for an adjournment. The reasons for the adjournment given to the magistrate were that Mr. Mahendran had to do a murder case in the High Court at Ipoh on the 3rd May, 1971. On that request the learned magistrate again adjourned the case. I would like to pause here and say that on the 30th April the prosecution was ready, the accused was present and so was his counsel. The murder trial had to commence three days after that day and there was no reason why the hearing could not have proceeded at Bruas in those circumstances. The matter, however, was adjourned to the 14th June, 1971. On that day the accused was present but not his counsel. It, however, so happened that the magistrate was on leave and the case had again to be adjourned to the 20th August, 1971. The hearing commenced on the 20th August, *i.e.* more than nine months after the arrest of the accused and after the case had been adjourned seven times. The case was part-heard on the 20th August, 1971 and ad-